

§ 302.101

5 CFR Ch. I (1–1–03 Edition)

Subpart E—Appeals

302.501 Entitlement.

AUTHORITY: 5 U.S.C. 1302, 3301, 3302, 8151, E.O. 10577 (3 CFR 1954–1958 Comp., p. 218); § 302.105 also issued under 5 U.S.C. 1104, Pub. L. 95–454, sec. 3(5); § 302.501 also issued under 5 U.S.C. 7701 et seq.

SOURCE: 55 FR 9407, Mar. 14, 1990, unless otherwise noted.

Subpart A—General Provisions

§ 302.101 Positions covered by regulations.

(a) *Positions covered.* With respect to the application of veteran preference, this part applies to each position in the Executive Branch of the Federal Government that is not in the competitive service and that is subject to the provisions of title 5, United States Code, or subject to a statutory requirement to follow the veteran preference provisions of title 5. With respect to restoration rights that are due to compensable injury and appeals therefrom, this part applies to those positions covered by 5 U.S.C. 8101(1) that are not in the competitive service.

(b) *Positions not covered.* This part does not apply to a position or appointment that is required by the Congress to be confirmed by, or made with the advice and consent of, the Senate.

(c) *Positions exempt from appointment procedures.* In view of the circumstances and conditions surrounding employment in the following classes of positions, an agency is not required to apply the appointment procedures of this part to them, but each agency shall follow the principle of veteran preference as far as administratively feasible and, on the request of a qualified and available preference eligible, shall furnish him/her with the reasons for his/her nonselection. Also, the exemption from the appointment procedures of this part does not relieve agencies of their obligation to accord persons entitled to priority consideration (see § 302.103) their rights under 5 U.S.C. 8151:

(1) Positions filled by persons appointed without pay or at pay of \$1 a year;

(2) Positions outside the continental United States and outside the State of

Hawaii and the Commonwealth of Puerto Rico when filled by persons resident in the locality, and positions in the State of Hawaii and the Commonwealth of Puerto Rico when paid in accordance with prevailing wage rates;

(3) Positions which the exigencies of the national defense program demand be filled immediately before lists of qualified applicants can be established or used, but appointments to these positions shall be temporary appointments not to exceed 1 year which may be renewed for 1 additional year at the discretion of the agency;

(4) Positions filled by appointees serving on an irregular or occasional basis whose hours or days of work are not based on a prearranged schedule and who are paid only for the time when actually employed or for services actually performed;

(5) Positions paid on a fee basis;

(6) Positions included in Schedule A (see subpart C of part 213 of this chapter) and similar types of positions when OPM agrees with the agency that the positions should be included hereunder;

(7) Positions included in Schedule C (see subpart C of part 213 of this chapter) and positions excepted by statute which are of a confidential, policy-making, or policy-advocating nature;

(8) Student Trainee positions when filled under Schedule B (see subpart C of part 213 of this chapter);

(9) Attorney positions; and

(10) Positions filled by reemployment of an individual in the same agency and commuting area, at the same or lower grade, and under the same appointing authority as the position last held; *Provided That*, there are no candidates eligible for the position on the agency's priority reemployment list established in accordance with § 302.303.

(11) Positions for which a critical hiring need exists when filled under § 213.3102(i)(2) of this chapter.

[55 FR 9407, Mar. 14, 1990, as amended at 58 FR 58260, Nov. 1, 1993; 60 FR 10006, Feb. 23, 1995]

§ 302.102 Method of filling positions and status of incumbent.

(a) To the extent permitted by statute and this chapter, each appointment, position change, and removal in